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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/585,389

06/02/2000

Takcki Yazaki

NIT-200

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05/04/2007

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ALEXANDRIA, VA 22314

EXAMINER

LAZARO, DAVID R

ART UNIT

PAPER NUMBER

2155

MAIL DATE

DELIVERY MODE

05/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/585,389

Applicant(s)

YAZAKI ET AL.

Examiner

David Lazaro

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is in response to the RCE filed 04/11/2007.
2. Claims 1, 4 and 8 were amended.
3. Claims 2-3, 6-7 and 9-21 are canceled.
4. Claims 1, 4, 5 and 8 are pending in this office action.

### ***Response to Amendment***

5. Applicant's arguments with respect to claims 1, 4, 5 and 8 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,091,709 by Harrison et al. (Harrison).
8. With respect to claim 1, Harrison teaches a bandwidth monitoring method suitable for use in a network on which specific type of packets are transferred in preference to packets other than the specific type of packets, comprising the steps of:

receiving a packet (Col. 7 lines 33-55);

detecting flow of the received packet by judging whether the received packet coincides with a flow condition pre-defined with at least one of in-header information items other than priority information (Col. 7 lines 33-55 and lines 15-19: a packet flow under RSVP is identified by filterspec which may be defined by any header fields);

determining whether the received packet is of the specific type or not based on the result of the detected flow (Col. 7 lines 33-55: receiving station determines priority based on the associated reservation);

monitoring whether the received packet violates a contract bandwidth under contract with a source of the specific type of packets (Col. 8 lines 8-38: QoS manager monitors the contract bandwidth for each priority level); and

when the received packet does not violate the contract bandwidth and the received packet does not correspond to the specific type of packets, transmitting the received packet after converting it to a packet having a specific value indicative of the specific type of packet in its header (Col. 8 lines 46-54: lower priority packets may be promoted to a higher priority if the bandwidth is available) .

9. With respect to claim 8, Harrison further teaches transmitting the received packet as a packet other than the specific type of packets when the received packet violates the contract bandwidth and the received packet corresponds to the specific type of packets (Col. 8 line 64 - Col. 9 line 8: packets will be demoted when the bandwidth is not available).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,091,709 by Harrison et al. (Harrison) in view of U.S. Patent 6,147,970 by Troxel (Troxel).

12. With respect to claim 4, Harrison does not explicitly disclose receiving a packet whose header has a priority field indicating priority information; and judging as to whether the received packet corresponds to the specific type of packets based on a value in the priority field.

Troxel teaches receiving a packet whose header has a priority field indicating priority information; and judging as to whether the received packet corresponds to the specific type of packets based on a value in the priority field (Col. 16 lines 43-55 and Col. 21 lines 10-15: priority may be based on a priority value in a header).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Harrison and modify it as indicated by Troxel such that it further comprises receiving a packet whose header has a priority field indicating priority information; and judging as to whether the received packet corresponds to the specific type of packets based on a value in the priority field. One

would be motivated to have this, as it is desirable to observe priority levels and maintain quality of service requirements (In Troxel: Col. 2 lines 29-39).

13. With respect to claim 5, Harrison does not explicitly disclose wherein said monitoring is carried out by using a leaky bucket algorithm with a first depth of bucket when the received packet does not correspond to the specific type of packets, and a leaky bucket algorithm with a second depth of bucket different from the first depth when the received packet corresponds to the specific type of packets, thereby to judge whether or not said packet violates the contract bandwidth being under contract with the source of the packet.

Troxel teaches bandwidth monitoring carried out by using a leaky bucket algorithm with a first depth of bucket when the received packet does not correspond to the specific type of packets, and a leaky bucket algorithm with a second depth of bucket different from the first depth when the received packet corresponds to the specific type of packets, thereby to judge whether or not said packet violates the contract bandwidth being under contract with the source of the packet (Col. 15 line 57 - Col. 16 line 5 and Col. 16 line 43 - Col. 17 line 22).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Harrison and modify it as indicated by Troxel such that it further comprises wherein said monitoring is carried out by using a leaky bucket algorithm with a first depth of bucket when the received packet does not correspond to the specific type of packets, and a leaky bucket algorithm with a second depth of bucket different from the first depth when the received packet corresponds to

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the specific type of packets, thereby to judge whether or not said packet violates the contract bandwidth being under contract with the source of the packet. One would be motivated to have this, as this allows for efficient use of bandwidth while maintaining quality of service requirements (In Troxel: Col. 2 lines 29-34).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
David Lazaro  
April 26, 2007

  
SALEH NAJJAR  
SUPERVISORY PATENT EXAMINER